IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.530 OF 2004

Shri Raghunath Mahipati Bacche and Ors.. Appellants

Versus

Smt.Bharati Dinkar Bacche .. Respondent

Mr.Vijay Killedar for appellants

CORAM : P.V.KAKADE, J.

DATE : 22nd JUNE, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur, who has confirmed the decree for possession, however modified the lower court’s order regarding directions for the purpose of mesne profits, by order dated 28.11.2003, which was preferred against the judgment and decree passed by Civil Judge, Junior Division, Panhala dated 15.9.2001 decreeing the suit for partition filed by the plaintiff.

2. The plaintiff had filed the suit for partition of the suit property on the ground that those belonged to joint family properties of herself and defendant no.1 and she had 1/4 share therein and for separate possession. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the property was joint family property and plaintiff had 1/4 share therein. It was also held that the defendant's contention that the deceased, husband of plaintiff, had relinquished his share in the joint property was negatived and further contention of non-joinder of necessary party came to be negatived and decree came to be passed against the present appellants. The appeal was carried to the District Judge, Kolhapur. The District Judge after hearing both the parties confirmed the order modifying the direction for mesne profits and disposed of appeal by Order dated 28.11.2003. Hence the present appeal.

3. At the outset it may be noted that the record is clear enough to show that there is absolutely no substantial question of law involved in this appeal. The learned advocate for the appellants argued that since the plea of relinquished of share by plaintiff's

deceased husband was specifically raised and there was no issue framed to that effect, the appellants were prejudiced and hence on that ground the appeal should be admitted. However, it is to be noted that the trial judge has framed the issue that since the year 1996 the defendants unlawfully ousted the plaintiff from the possession of the suit property. While adjudicating this issue the learned trial judge has referred to the plea of relinquished taken up by the defendants and has observed that there is no iota of any evidence in support of such plea.

. Similarly the issues regarding non-joinder of parties as well as bar of Section 23 of Hindu Succession Act are sought to be raised. However, on perusal of both the judgment of both the courts below, it is seen that the issue of non-joinder of parties is properly dealt with and negatived, whereas question of bar of Section 23 of the Act does not arise, as there was no plea to that effect nor there was any evidence led on behalf of the defendants that the house property in question was a dwelling house within the meaning of Section 23 of the Act. In the result, it is clear that both the courts below have properly appreciated the

entire evidence and therefore, it would brook no interference, and therefore, in the result the appeal stands dismissed..